

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DEMOCRACY FORWARD FOUNDATION,
1333 H Street NW, 11th Floor
Washington, DC 20005

Plaintiff,

vs.

U.S. AGENCY FOR GLOBAL MEDIA,
330 Independence Avenue SW
Washington, DC 20237

Defendant.

Case No.

COMPLAINT

1. Plaintiff Democracy Forward Foundation (“Democracy Forward”) brings this action against Defendant the U.S. Agency for Global Media (“USAGM”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”).

2. On November 15, 2018, Democracy Forward submitted a FOIA request to USAGM (“First Request”) seeking records relating to a 15-minute video segment critical of George Soros (“Soros Segment”) that was televised in May 2018 by Radio and Television Martí—the primary outlet of the Office of Cuba Broadcasting, a component of USAGM. The Soros Segment has been widely decried as anti-Semitic.

3. On December 17, 2018, in response to media reports documenting widespread bias and inappropriate political influence at USAGM, Democracy Forward submitted another FOIA request (“Second Request”) seeking additional records relating to the Soros Segment, USAGM’s response to publication of the Soros Segment, and to an apparent broader trend of

USAGM affiliate offices breaching various journalistic norms, including by publishing bigoted and biased content.

4. Through these records requests, Democracy Forward seeks to shed light on how bigoted and biased content, like the Soros Segment, made it to air, and to understand both the steps taken in response and the personnel changes that are reportedly underway at USAGM and its affiliates.

5. Defendant has failed to respond sufficiently to Democracy Forward's requests. Democracy Forward therefore respectfully requests that the Court compel USAGM to comply with the FOIA and produce the requested records.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

7. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

8. Plaintiff Democracy Forward Foundation is a not-for-profit organization incorporated under the laws of the District of Columbia and based in Washington, D.C. Democracy Forward works to promote transparency and accountability in government by educating the public on government actions and policies.

9. Defendant U.S. Agency for Global Media¹ is a federal agency within the meaning of FOIA, *see* 5 U.S.C. § 552(f)(1), and is headquartered in Washington, D.C. USAGM has possession, custody, and control of records that Democracy Forward seeks.

FACTUAL ALLEGATIONS

10. In October 2018, various media outlets reported on a 15-minute video segment attacking George Soros, released in May 2018, that aired on Radio and Television Martí—the primary outlet of the Office of Cuba Broadcasting, which is a component of USAGM.²

11. The Soros Segment, which has been decried as an act of anti-Semitism, described Mr. Soros as, among other things, a “multimillionaire Jew of Hungarian origin” and as a “non-practicing Jewish financial speculator of flexible morals.”³

12. The Soros Segment took on additional national salience after Mr. Soros was targeted in a spate of attempted package bombings, and in the wake of the mass shooting at the Tree of Life synagogue in Pittsburgh.⁴

¹ Prior to August 2018, USAGM was known as the Board of Broadcasting Governors or BBG. *See* Press Release, USAGM, U.S. Government Media Agency Rebrands: Statement from CEO John F. Lansing (Aug. 22, 2018), *available at* <https://www.prnewswire.com/news-releases/us-government-media-agency-rebrands-300701142.html>. USAGM is still referred to by its previous name in certain statutes, regulations, and official records. *See, e.g.*, 22 C.F.R. Part 503. Accordingly, and as explained in the requests, *see* Ex. A at 1 n. 1; Ex. B at 1 n. 1, the terms “U.S. Agency for Global Media” and “USAGM” should be construed to include the terms “Board of Broadcasting Governors” and “BBG” where appropriate.

² *See, e.g.*, Colin Dwyer, *U.S. Agency Investigates 'Taxpayer-Funded Anti-Semitism' Against George Soros*, Nat'l Pub. Radio, Oct. 30, 2018, <https://www.npr.org/2018/10/30/662052937/u-s-agency-investigates-taxpayer-funded-anti-semitism-againstgeorge-soros>.

³ *Id.*

⁴ *See, e.g.*, Michael Kranish, *Explosive Device Targets George Soros Amid Escalating Political Attacks Against Billionaire Hedge Fund Founder*, Wash. Post, Oct. 24, 2018, https://www.washingtonpost.com/politics/explosivedevice-targets-george-soros-amid-escalating-political-attacks-against-billionaire-hedge-fundfounder/2018/10/24/7d387982-d79b-11e8-aeb7-ddcad4a0a54e_story.html?utm_term=.0e19d00a962a.

13. Radio and Television Martí cited heavily from the work of Judicial Watch in the Soros Segment, a fact which John Lansing, the chief executive of USAGM, focused on in his recent rebuke of the Soros Segment.⁵ Mr. Lansing commented: “The person developing the Soros story was using Judicial Watch as a source as I understand it—the story was not only poorly sourced, it relied heavily on one less-than-credible source[.]”⁶

14. The blowback that resulted from the Soros Segment prompted Mr. Lansing to issue apologies to Mr. Soros and Mr. Soros’ foundation, the Open Society Foundation.⁷

15. It also prompted USAGM to undertake a “full content audit” of Martí’s work to identify any unprofessional reporting” and to provide “ethics and best practices training” for the staff of Martí.”⁸ It is also now “hiring a ‘standards and practices’ editor.”⁹

⁵ Aaron C. Davis, *U.S.-Funded Broadcaster Firing 8 Reporters and Editors Over ‘Rogue’ Anti-Semitic Reports Disparaging George Soros*, Wash. Post, Feb. 27, 2019, https://www.washingtonpost.com/investigations/us-funded-broadcaster-firing-8-reporters-and-editors-over-rogue-anti-semitic-reports-disparaging-george-soros/2019/02/27/72d711f2-3ad2-11e9-aaae-69364b2ed137_story.html?utm_term=.b38ad74360f8 (internal quotation marks omitted).

⁶ *Id.*

⁷ Elizabeth Williamson, *Troubled By Lapses, Government’s Voice To The World Braces For New Trump Management*, N.Y. Times, Dec. 12, 2018, <https://www.nytimes.com/2018/12/12/us/politics/voice-of-america-trump.html>.

⁸ Aaron C. Davis, *Probe of U.S.-Funded News Network That Called George Soros a ‘Jew of Flexible Morals’ Finds Additional Offensive Content*, Wash. Post, Dec. 12, 2018, https://www.washingtonpost.com/investigations/probe-of-us-funded-news-network-that-called-george-soros-a-jew-of-flexible-morals-finds-additional-offensivecontent/2018/12/12/9cc6bc74-fd56-11e8-ad40-cdf0e0dd65a_story.html?utm_term=.3437a4687f26.

⁹ *Id.*

16. Office of Cuba Broadcasting Director Tomás P. Regalado asserted, following a review of internal e-mails, that producer Isabel Cuervo and news director Wilfredo Cancio were “the only two people who had anything to do with the report coming out on the air.”¹⁰

17. Indeed, Mr. Cancio has already been terminated and USAGM is apparently in the process of doing the same for Ms. Cuervo.¹¹

18. However, contrary to Mr. Regalado’s assertion that only two individuals “had anything to do” with the Soros Segment, at least eight reporters and editors will be terminated over the Soros Segment.¹²

19. Moreover, new reporting reveals that USAGM—and the various component outlets within its purview—is plagued by a broader trend of bigoted and biased content making it to print or air, and journalistic standards otherwise being flouted.¹³ This trend has included the following incidents:

(1) A Voice of America (“VOA”) internal audit revealed that 15 of its journalists had “accepted ‘brown envelopes,’ or bribes passed to them by a Nigerian official”;¹⁴

¹⁰ See Nora Gámez Torres, Sarah Blaskey, & Mario J. Pentón, *TV Marti Under Scrutiny Following Controversial Report and Two Employee Suspensions*, Miami Herald, <https://www.miamiherald.com/news/nation-world/world/americas/cuba/article220915645.html>. Plaintiff believes that these records are likely responsive to its request. Mr. Regalado’s apparent review of internal emails indicates that components of USAGM have already compiled and reviewed responsive records, and thus should be in a position to produce them expeditiously.

¹¹ See Davis, *supra* note 8.

¹² *Id.*

¹³ See, e.g., Williamson, *supra* note 7.

¹⁴ *Id.*

- (2) Sasha Gong, the chief of VOA’s Mandarin-language section, approved a three-hour live interview with Guo Wengui, a Chinese billionaire “known for making unsubstantiated charges against Beijing” (the “Wengui Interview”);¹⁵
- (3) Ms. Gong was placed on paid leave following the Wengui Interview, and during that period “she appeared, while still on the federal payroll, in ‘Trump@War,’ a documentary directed by [Steve] Bannon”;¹⁶
- (4) In September, Radio and Television Martí published an opinion article by Juan Felipe Benemelis, *Europa + Arabia = Eurabia*, which “decries the ‘Islamization that is happening in European cities’” as part of “a decades-old ‘deliberate strategy of Muslim leaders’ to weaken opposition to sharia law and ultimately take over the continent.”¹⁷ The Islamophobic article was reportedly one of four opinion pieces written by Mr. Benemelis and published by Radio and Television Martí.¹⁸

20. These breaches of journalistic standards and protocols have resulted in disciplinary actions, including the terminations described above, in a number of USAGM-affiliated offices.¹⁹

21. And yet, concerns about the ability of USAGM to produce objective journalism consistent with its mission persist, in part, because of the presence of Jeffrey Shapiro—“a former Breitbart News writer [and] acolyte of Stephen K. Bannon”—and President Trump’s nomination

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Davis, *supra* note 8.

¹⁸ *Id.*

¹⁹ See *id.*; see also Williamson, *supra* note 7.

of Michael Pack—a documentary filmmaker who has partnered with Mr. Bannon—to serve as the chief executive for USAGM.²⁰

22. Both men are viewed as principally loyal to President Trump, who has stated that the United States should, as a means of rebutting reporting critical of the President, develop its “own Worldwide Network to show the World the way we really are, GREAT!”²¹

23. In an effort to understand and explain to the public how bigoted and biased content, like the Soros Segment, made it to publication, the steps taken by USAGM in response, and personnel and other changes apparently underway within USAGM and its affiliates, Democracy Forward submitted the First and Second Requests.

The First Request

24. Democracy Forward submitted the First Request to USAGM on November 15, 2018, seeking:

- (1) All records sent or received by Isabel Cuervo, Wilfredo Cancio, Andre Mendes, Jeffrey Shapiro, or Tomás Regalado discussing George Soros or the Soros Segment, whether before or after it aired, and including, but not limited to, discussions of or reactions to media coverage of the Soros Segment, and the review that USAGM conducted following these reports.
- (2) All communications between (i) Radio and Television Martí, the Office of Cuba Broadcasting, or USAGM and (ii) anyone affiliated with Judicial Watch, including, but not limited to, all communications with individuals writing from an e-mail address ending with “@judicialwatch.org.”
- (3) All communications between (i) Radio and Television Martí, the Office of Cuba Broadcasting, or USAGM and (ii) Lia Fowler.
- (4) All communications between (i) Radio and Television Martí, the Office of Cuba Broadcasting, or USAGM and (ii) Wayne Madsen.

²⁰ Williamson, *supra* note 7.

²¹ Donald J. Trump (@realDonaldTrump), Twitter (2:47 PM, Nov. 26, 2018), <https://twitter.comrealDonaldTrump/status/1067142820388052993>.

- (5) All records containing implementing guidance or other instructions relating to the prohibition on USAGM funds being used to influence public opinion in the United States.

See Ex. A at 2-3 (internal citations omitted).

The Second Request

25. Democracy Forward submitted its Second Request to USAGM on December 17, 2018, seeking:

- (1) All records reflecting communications discussing or reacting to President Trump’s November 26, 2018 tweet in which he described “the possibility of the United States starting our own Worldwide Network to show the World the way we really are, GREAT!”
- (2) All records sent or received by Maite Luna discussing George Soros or the Soros Segment, whether before or after it aired, and including, but not limited to, discussions of or reactions to media coverage of the Soros Segment, and the review that USAGM conducted following these reports.
- (3) A copy of the “full content audit” reportedly being conducted on Radio and Television Martí’s work, including any interim or partial findings relating to that review.
- (4) All records containing implementing guidance or other instructions relating to ethics and best practices training, reportedly provided to the staff of Radio and Television Martí following the Soros Segment.
- (5) All records reflecting communications sent or received by Juan Felipe Benemelis, Maite Luna, Isabel Cuervo, Wilfredo Cancio, Andre Mendes, Jeffrey Shapiro, or Tomás Regalado discussing any of the four opinion pieces Mr. Benemelis wrote for Radio and Television Martí, whether before or after they ran, and including, but not limited to, discussions of or reactions to media coverage of the articles.
- (6) Copies of all articles or essays written by Juan Felipe Benemelis and published in any form by Radio and Television Martí, or other USAGM affiliates, whether or not those articles continue to be publicly accessible.
- (7) All records containing or discussing the terms of Juan Felipe Benemelis’s employment or affiliation with Radio and Television Martí, or other USAGM affiliates, including but not limited to copies of employment agreements or contracts.

- (8) All records sent or received by Sasha Gong, John Lansing, Amanda Bennett, Matthew Walsh, Nasserie Carew, David Kligerman, or Jeffrey Shapiro discussing Guo Wengui or the Wengui Interview, whether before or after it aired, and including, but not limited to, discussions of or reactions to media coverage of the Wengui Interview, and discussions of any USAGM or VOA review that followed the airing of the Wengui Interview.
- (9) All communications between (i) John Lansing, Jeffrey Shapiro, Andre Mendes, Tomás Regalado, Amanda Bennett, Sasha Gong, individuals at Radio and Television Marti, individuals at the Office of Cuba Broadcasting, individuals at Voice of America, individuals at Radio Free Asia, individuals at Radio Free Europe/Radio Liberty, individuals at Middle East Broadcasting Networks, or individuals at USAGM and (ii) Stephen Bannon, Michael Pack, individuals affiliated with Breitbart News, or individuals writing from a “breitbart.com” email address.

See Ex. B at 3-4.

USAGM Response

26. USAGM’s Office of the General Counsel responded to the First Request by electronic mail on November 19, 2018, attaching a letter acknowledging receipt of the First Request and assigning the First Request Reference Number FOIA19-011. *See Ex. C at 1.*

27. Democracy Forward has not received any further correspondence or communication from USAGM regarding either the First Request or the Second Request.

Exhaustion of Administrative Remedies

28. Because Defendant has “fail[ed] to comply with the applicable time limit provision” of the FOIA, Democracy Forward is “deemed to have exhausted [its] administrative remedies.” 5 U.S.C. § 552(a)(6)(C)(i).

COUNT I

Violation of FOIA, 5 U.S.C. § 552

USAGM's Failure to Respond to Plaintiff's Requests Within 20 Days

29. Democracy Forward repeats and incorporates by reference the foregoing paragraphs as if fully set forth herein.
30. By failing to respond to Democracy Forward's requests within the statutorily mandated time period, Defendant USAGM has violated its duties under FOIA, *see* 5 U.S.C. § 552 *et seq.*, including but not limited to its duties to conduct a reasonable search for responsive records, to take reasonable steps to release all reasonably segregable nonexempt information, and to not withhold responsive records.
31. Democracy Forward is being irreparably harmed by USAGM's violation of the FOIA, and Democracy Forward will continue to be irreparably harmed unless USAGM is compelled to comply with the FOIA.

REQUESTED RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- (1) order Defendant to conduct a search for any and all responsive records to Plaintiff's FOIA requests and demonstrate that they employed search methods reasonably likely to lead to discovery of records responsive to Plaintiff's FOIA requests;
- (2) order Defendant to produce, by a date certain, any and all nonexempt records responsive to Plaintiff's FOIA request and a *Vaughn* index of any responsive records withheld under a claim of exemption;

- (3) enjoin Defendant from continuing to withhold any and all nonexempt records responsive to Plaintiff's FOIA request;
- (4) order Defendant to grant Plaintiff's request for a fee waiver;
- (5) award Plaintiff attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (6) grant Plaintiff such other relief as the Court deems just and proper.

Dated: March 5, 2019

Respectfully submitted,

/s/ Nitin Shah

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